ACCOUNTS, STATE BOARD OF—MENTAL HEALTH—
Examination of Records of Community Psychiatric Clinics or Mental Health Centers

Opinion Requested by Mr. Richard L. Worley, State Examiner.

I am in receipt of your request for an Opinion concerning the authority of the State Board of Accounts to examine the records and accounts of community psychiatric clinics and community mental health centers. In relation to such institutions you ask the following questions:

“1. Does the State Board of Accounts have authority to examine the records and accounts of organizations defined in Ch. 164, Acts 1959, as amended, if such organizations receive financial assistance from a county?

“2. If the answer to question numbered one (1), is in the affirmative, is it the duty of the State Board of Accounts to examine such records and accounts?

“3. Does the State Board of Accounts have authority to examine the records and accounts of organizations defined in Ch. 48, Acts 1965, as amended, if such organizations receive financial assistance from a county?

“4. If the answer to question numbered three (3) is in the affirmative, is it the duty of the State Board of Accounts to examine such records and accounts?

“5. If your answers to the foregoing questions are to the effect that the State Board of Accounts has the authority to examine the records and ac-
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counts of organizations referred to in questions numbered one (1) and three (3), will such organizations be required to pay the full cost of examination or at the rate charged to governmental units operating on tax revenues?

"6. If it is your opinion that the records and accounts referred to are subject to examination by the State Board of Accounts, does this office have authority to prescribe uniform accounting records for the subject agencies and require that the same be kept?"

1. Acts 1959, ch. 164, as amended by Acts 1967, ch. 42, the same being Burns IND. STAT. ANN. §§ 22-3009 through 22-3011, authorizes county aid to community psychiatric clinics. The first section of the Act, Burns § 22-3009, defines the term "community psychiatric clinic" thusly:

"As used in this act, the term ‘community psychiatric clinic’ shall mean any psychiatric clinic incorporated under the provisions of ‘The Indiana General Not for Profit Corporation Act,’ the same being Chapter 157 of the Acts of the Indiana General Assembly of 1935, which clinic is organized and operated solely for the purpose of providing psychiatric services to residents of any specific county."

Thus, the institutions involved are privately owned.

The second section of the Act, as amended, Burns § 22-3010, provides:

"The board of county commissioners of a county may authorize the furnishing of financial assistance to any community psychiatric clinic or other community facilities and services for the mentally ill, such as, but not limited to, halfway houses, day care centers and residential centers located, or which may hereafter be located in the county; and the county council of the county, upon the request of the board of county commissioners, may appropriate annually, from the general fund of the county, funds to pro-
vide such financial assistance in an amount of not to exceed the amount which could be collected from the annual levy of a five cent (5¢) tax on each one hundred dollars ($100) valuation of taxable property.”

The third section of the Act, as amended, Burns § 22-3011, authorizes a county that has no community psychiatric clinic within its confines to provide financial assistance to such a clinic in another county.

The situation, then, is one wherein a privately owned institution is supported at least in part by monies derived from tax levies.

The State Board of Accounts is created by, and its authority basically described by Chapter 55 of Acts 1909. Section 17 of that Act, the same being Burns § 60-219, contains several definitions, including:

“The term ‘municipality,’ as used in this act, shall be construed to extend to, include and mean any county, township, city, town, school town, school township, or school city in this state. . . . The term ‘public institution,’ as used in this act, shall be construed to extend to, include and mean any institution or public service industry maintained in whole or in part at public expense or supported in whole or in part by appropriations or public funds or by taxation. The term ‘public service industries,’ as used in this act, shall be construed to extend to, include and mean any and all public service industries owned either directly by the municipality or to the support of which municipality contributes from public funds, or the capital stock of which the municipality may be the owner of any part, or the bonds of which may be owned or guaranteed by the municipality.”

The powers and duties of the State Examiner of the State Board of Accounts, who is the principal officer of that Board (see section 1, Burns § 60-201), are set out in section 9 of the Act, as amended by Acts 1945, ch. 176, § 3, the same being Burns § 60-211, which provides in part:
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"It shall be the duty of the state examiner, and he is given full power to examine personally or through the deputy examiners and field examiners, all accounts and all financial affairs of every public office and officer and of every public institution, including all state offices and state institutions, and shall make such examination at least once each year. On every such examination inquiry shall be made as to the financial condition and resources of each municipality or institution, whether the laws of the state and the requirements of the state board of accounts have been complied with, and into the methods and accuracy of the accounts and reports of the office examined. . . ."

The question, then, is whether a privately owned institution's acceptance from a county of monies raised by taxes will make the accounts and records of that institution subject to audit by the State Board of Accounts.

A similar situation was considered in 1953 O.A.G. p. 492, wherein the Attorney General was asked whether the State Examiner had the authority to examine "all accounts and financial affairs of a hospital operated by an association which has been incorporated as a corporation not for profit and where such hospital is maintained in part by public funds raised by taxation."

After noting that this hospital, classified by its directors as a privately owned private institution, had received over seventy-five thousand dollars in aid from the city in the preceding three years, the Attorney General concluded:

"Your question must be answered in the affirmative since for purposes of the Public Accounting Law, cited and quoted above, the General Hospital Association of Elkhart, Indiana must be construed to be a public institution. It is unimportant in answering this question to determine whether it is a public or private corporation for the reason that if it accepts appropriations of public or tax funds it thereby becomes subject to examination by reason of thereby becoming included within the statutory definition of public in-
stitutions for the purpose of the Public Accounting Law.”

That opinion I consider to be an accurate interpretation of the law, and in accord with that opinion I conclude that a community psychiatric clinic which accepts financial assistance from a county becomes a public institution subject to audit by the State Board of Accounts.

2. In answer to your second question I shall again set out a portion of Acts 1909, ch. 55, § 9, as amended by Acts 1945, ch. 176, § 3, the same being Burns § 60-211:

“It shall be the duty of the state examiner, and he is given full power to examine personally or through the deputy examiners and field examiners, all accounts and all financial affairs of every public office and officer and of every public institution, including all state offices and state institutions, and shall make such examination at least once each year.”

Thus, the very same statute that confers upon the State Examiner the authority to examine the records of community psychiatric clinics that accept assistance from counties imposes upon the State Examiner the positive duty of doing so annually. The language is so explicit that interpretation is unnecessary and further discussion would be redundant.

3. Chapter 48 of Acts 1965, as amended by Acts 1967, ch. 149, the same being Burns §§ 22-3014 through 22-3018, authorizes counties to furnish financial assistance to community mental health centers and community mental retardation centers. Said centers are defined in the first section of the Act, Burns § 22-3015, thusly:

“As used in this act the terms ‘community mental health center’ and ‘community mental retardation center’ shall mean a program of services approved by the department of mental health and organized for the purpose of providing multiple services for the mentally disordered and operated by one of the following or combinations thereof.
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"1. Any city, town, county or other political subdivision of this state; any agency of the State of Indiana or of the United States; and any political subdivision of another state; including but not limited to and without limiting the generality of the foregoing, hospitals owned or operated by units of government and building authorities organized for the purpose of constructing facilities to be leased to units of government;

"2. A corporation incorporated under the provisions of the 'Indiana General Not for Profit Corporation Act';

"3. A non-profit corporation incorporated in another state; and

"4. A university or college."

The second section of the Act, Burns § 22-3014, authorizes a county to furnish financial assistance to centers located within the county; the third section of the Act, Burns § 22-3016 authorizes two or more counties to provide financial assistance to such a center that is established to provide service to such counties no matter in which county it is located; section five of the Act, Burns § 22-2018, authorizes counties to issue bonds to provide funds for such centers as authorized in sections two and three; and section four of the Act, Burns § 22-3017, authorizes a county to provide financial assistance to such a center located in a state other than Indiana if such center provides service to the residents of that Indiana county.

For the reasons given in answer to your first question, it is my opinion that any such center that receives financial assistance from a county is a public institution subject to audit by the State Board of Accounts.

4. The answer to your fourth question is governed by the same principles as is the answer to your second question. It is the duty of the State Board of Accounts to examine the records and accounts of community mental health centers and community retardation centers that receive financial assistance from one or more counties. However, I would like to interject a limiting factor that is also, although not so directly, applicable to your second question.
Some of the institutions eligible to receive financial assistance for the operation of a community mental health center or mental retardation center are large and complex, and the center they operate may represent a minor portion of their activities. A privately owned university or college, for instance, might enroll thousands of students, and its records and accounts would reflect tuition receipts, scholarships, endowments, research grants, faculty salaries, building funds, athletic events, and a multitude of other equally diverse debits and credits. If that university or college were to operate a mental health center or a mental retardation center as a semi-autonomous division or department of the university, and were to keep separate and complete records and accounts reflecting the activities of that center, than I believe the annual audit need not involve accounts other than those of the center. This qualification is not intended to limit the authority of the State Board of Accounts to investigate and audit the entire records of the institution should it deem such action necessary, but rather to suggest that the positive duty of examination would be satisfied by the audit of the separate account.

5. Payment for the cost of audits by the State Board of Accounts is regulated by Acts 1945, ch. 15, § 3, the same being Burns § 60-216, a rather lengthy statute which provides:

"The expense of examination and investigation of public accounts shall be paid by each municipality for the examination and investigation of its accounts as hereinafter provided.

"The state examiner shall not later than the tenth day of January of each year certify to the auditor of each county the number of days actually served by field examiners in examining the records of each taxing unit together with the amount chargeable to each taxing unit within the county for such examinations at the rate of ten dollars per day for each field examiner engaged in making such examinations. Immediately upon receipt of such certified statement, the county auditor shall issue his warrant on the county treasurer payable to the treasurer of state out of the general
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fund of the county for the amount stated in said certificate, and said county general fund, except as to the expense of examination and investigation of county offices, to be reimbursed by the county auditor out of the money due such taxing units at next semi-annual settlement of the collection of taxes.

“In the event the county to whom such claim may be made shall not have possession or collection of such funds due or to be due to any municipality the affairs of which are examined, then such certificate shall be filed with, and such warrant shall be drawn by, the disbursering officer of such municipality having authority to draw warrants upon its funds and said warrant shall be paid forthwith. The said money when received by the treasurer of state shall be deposited to the credit of the state general fund.

“It shall also be the duty of the state examiner to certify, not later than the tenth day of January of each year to the proper disbursing officer the total amount of expense incurred by the examination of any unit of state government which is now or may hereafter by law be required to bear the costs of its own examination and operating expense or of any utility owned or operated by any municipality or any department thereof, which utility is operated from revenues or receipts other than taxation, and upon receipt of such certificate such unit of state government or utility shall immediately pay to the treasurer of state the amount so charged. The said money when received by the treasurer of state shall be deposited to the credit of the state general fund.

“It shall also be the duty of the state examiner to certify to the county auditor the costs of typing reports of examination of each taxing unit within the county; to each unit of state government which is now or may hereafter by law be required to bear the costs of its own examination and operating expense and to each utility owned or operated by any municipality or any department thereof, which utility is operated from revenues or receipts other than taxation, and upon re-
receipt of such certificate the county auditor or the disbursing officer of such unit of state government or utility shall issue a warrant or check payable to the state examiner for the total amount thereof. That there be and is hereby created a revolving fund in the hands of the state examiner to be used by him for the payment of the expense of typing reports of examination. The money, as above provided, when received shall be receipted into said revolving fund.

"The term 'unit of state government' as used in this act shall mean, state offices, boards, commissions, departments, societies, associations, services, undertakings and funds."

The statute above specifies that revenue supported municipal utilities and those units of state government required by law to do so shall pay for their own audit at the actual cost thereof. The institutions presently under consideration do not fall into either of those categories.

The statute also speaks of municipalities and "taxing units," categories which also do not directly include the institutions under consideration. The term "municipality" is defined by section 17 of the Act (Burns § 60-219) as "any county, township, city, town, school town, school township, or school city in this state." The term "taxing unit" is not defined. However, a close reading of the above statute reveals that the terms "municipality" and "taxing unit" are used interchangeably.

No other classification nor finer breakdown is provided. Thus the inevitable conclusion is that the "municipality" or "taxing unit" must bear the cost of the audit of any tax supported semi-autonomous or autonomous division or department of that municipality. For example, the cost of auditing the records and accounts of a Justice of the Peace is to be borne by the township of which he is an officer.

The corollary to the conclusion above is that the institutions presently under consideration, being tax supported at least in part, must be classified as autonomous departments of the counties supplying the tax monies, and that those counties, the "taxing units," must pay for the cost of the
audit of such institutions at the rate of ten dollars per examiner per day.

6. The authority of the State Board of Accounts to prescribe uniform accounting records is set out in section two of the Public Accounting Act, as last amended by Acts 1945, ch. 176, § 2, the same being Burns § 60-202, which provides:

"The state board of accounts, with the approval of the governor and the auditor of state, shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this Act, which shall be uniform for every public office and every public account of the same class, and which shall exhibit true accounts and detailed statements of funds collected, received and expended for or on account of the public for any and every purpose whatever, and by all public officers, employees or other persons, which shall show the receipt, use and disposition of all public property, and the income, if any, derived therefrom; and shall show all sources of public income and the amounts due and received from each source, and shall show all receipts, vouchers and other documents kept, or that may be required to be kept, necessary to separate to itself and prove the validity of every transaction; and they, with the approval of the governor and auditor of state, shall formulate all statements and reports made or required to be made for the internal administration of the office to which they pertain, and all reports published or that may be required to be made or published for filing in the office of state examiner or for the information of the people, regarding any and all details of the financial administration of public affairs; and they, with the approval of the governor and auditor of state, shall from time to time make and enforce such changes in the system and forms of accounting and reporting as shall by them be deemed wise or as may become necessary in order to conform to law."
Also pertinent to your question is section 22 of the Act, Burns § 60-224, which provides:

“It is hereby made the duty of the various officers of the state and its institutions and municipalities to adopt and use the books, forms, records and systems of accounting and reporting that shall be adopted by the board of accounts, when directed so to do by said board, and all forms, books and records necessary thereto shall be purchased by said officers and in the manner now provided by law. Any officer or person who shall refuse to provide such books, forms, or records, or who shall fail or refuse to use them, or who shall fail or refuse to keep the accounts of his office as directed by said board as provided herein, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred ($100) dollars and removed from such office.”

The obvious and unambiguous intent of the preceding statutes is to establish a uniform accounting system for all public offices and to require all public officers to follow that accounting system. No mention is made of “public institutions” as defined in the Act, the class of institutions being discussed herein. This omission can be contrasted with that section of the Act requiring annual reports, which provides in part:

“The state examiner shall require from every municipality and every public institution financial reports covering the full period of each fiscal year, said reports to be made respectively by the county auditor, township trustee, city clerk, town clerk and secretary of the board of school trustees or commissioners for their respective municipalities, and by the superintendents of public institutions, in accordance with the forms and methods herein provided for, which shall be uniform for all accounts of the same class, which said reports shall be prepared, verified and filed with the state examiner within thirty days after the close of each fiscal year, which shall be December 31 of each
year in all cases in which the fiscal year is not otherwise fixed by law. Such reports shall contain an accurate statement, in summarized form, of all collections made by or receipts received by such municipalities and institutions from all sources, all accounts due the public treasury but not collected and of all expenditures for every purpose and by what authority authorized...” (Acts 1909, ch. 55, § 4; Burns § 60-204)

The above combination of statutes is an instance for the application of the principle stated (but not applied) in Highland Sales Corp. v. Vance, 244 Ind. 20, 25, 186 N.E. 2d 682, 685 (1962):

"'It is an elementary rule of statutory construction, that when a definite provision is made with reference to one particular subdivision of a section of the law dealing with the identical subject matter as the other subdivisions thereof and a similar reference is omitted from the other subdivisions thereof as well as from all of the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.' Cannon v. Towner, 70 N. Y. S. 2d 303, 312, 188 Misc. 955 (Supreme Court, Special Term, 1947)."

Since this carefully written Act specifically includes "public institutions" in that section requiring the filing of annual reports and does not mention such institutions in those sections concerning the establishment of a uniform accounting system, I can only conclude that the omission was intentional and that the State Board of Accounts does not have the authority to prescribe uniform accounting records for the institutions considered herein.